

BASIC ORDERING AGREEMENT BETWEEN

The Regents of the University of California
AND
Canon U.S.A., Inc.
in care of
Rocky Mountain Business Systems of Santa Fe, N.M.

**BASIC ORDERING AGREEMENT
NO. 8974N0018-RP**

Agreement Components:

[BOA No. 8974N0018-RP](#)

[Terms and Conditions 10/96](#)

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This Basic Ordering Agreement (BOA) between Canon U.S.A., Inc. in care of Rocky Mountain Business Systems, Inc. (hereinafter called "Seller") and The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, (herein after called the "University") on behalf of the Department of Energy (DOE) is entered into to provide products and services to the DOE and its Management and Operating Contractors and designated affiliates in accordance with the following.

1. This Agreement includes products listed in Seller's GSA Federal Supply Schedule Contract(s) Numbers GS-26F-1016B for Purchase, Deferred Payment, and Least-to-Ownership Program (LTOP), GS-35F-4587G for Purchase, GS-25F-4019B and GS-35F-1033D, also for purchase ("Seller's GSA Contracts").
2. This Agreement is for the Department of Energy and those contractors and designated affiliates named in Attachment A.
3. The pricing is in accordance with Seller's GSA Contracts less five percent (5%) discount on purchase price(s). Any temporary promotions reducing the purchase price(s) of an item or items on Seller's GSA Contracts will not be further discounted by this BOA.
4. Additional Terms and Conditions are provided under Attachment B and in Seller's GSA Contracts.
5. Any news release, public announcement, advertisement or publicity proposed to be released by either party concerning the existence of this Agreement, its terms or conditions or the activities of either party in connection with the resulting agreement shall be subject to the approval of both parties prior to release.
6. The University estimates, but does not guarantee, that the volume of purchases/placements through this BOA will be \$1,000,000.00.

The parties agree that the DOE (including DOE field offices) or any entity having a prime contract with the DOE awarded pursuant to Federal Acquisition Regulation (FAR) Subpart 17.6 and Department of Energy Acquisition Regulation (DEAR) Subpart 917.60 (collectively hereinafter called "Contractor"), may place orders under this BOA and receive the appropriate, discounted price.

Each Contractor shall place its own orders under this Agreement and shall be direct-billed accordingly.

ARTICLE 1 - SCOPE OF WORK

All orders placed hereunder shall reference the number of this BOA (Agreement No. 8974N0018-RP). Effective term of Agreement is December 1, 1997 through March 30, 2002. If any of the above cited GSA Schedule Contracts expire without issuance of a successor Schedule Contract, then such Contracts shall be not a part of this BOA effective upon their expiration.

The Seller agrees to furnish such quantities of products described herein as Contractor may order during the term of this Agreement. The Sellers obligation to each Contractor shall become effective upon acceptance of particular orders issued under the Agreement.

ARTICLE 2 – DELIVERY/PAYMENT

The work specified in Article 1 shall be completed and delivered as follows:

F.O.B. Point (point of delivery):	Destination
Payment Terms:	Net 30 days from receipt of a proper invoice.

Delivery location and schedule shall be identified and or negotiated for each order under this BOA.

ARTICLE 3 - FIXED PRICES

Contact Seller's Representative

ARTICLE 4 - ADMINISTRATIVE

BOA Subcontract Administrator's Address is as follows:	Patsy Sylvester Procurement Contract Specialist Los Alamos National Laboratory P.O. Box 1663, Mail Stop D442 Los Alamos, N. M. 87545
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ARTICLE 5 - AMENDMENT TO ATTACHMENT B BASIC ORDERING AGREEMENT GENERAL TERMS AND CONDITIONS FOR COMMERCIAL ITEMS, DOE CONTRACTORS (10/96):

A. Clause 2, Order of Precedence is hereby changed to read as follows:

2. Order of Precedence

Any inconsistencies shall be resolved in accordance with the following descending order of precedence (1) Item description, (2) Site Specific Terms and Conditions, (3) BOA (4) general terms and conditions, and (5) face of the Order.

B. Clause 5 Warranty is hereby changed to read as follows:

5. Warranty

Seller expressly warrants that items delivered under the Orders shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of the BOA and Order. The warranty shall begin upon acceptance and extend for a period of ninety (90) days. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such item(s). Transportation of replacement items and return of nonconforming items shall be at Seller's expense. If repair, replacement, or reperformance of services is not timely. Company may elect to return the nonconforming items or repair or replace them or reprocur of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocur the services at Seller's expense. Any implied warranty of merchantability or fitness for a particular purpose is hereby disclaimed.

C. Clause 8 Transportation is hereby changed to read as follows:

8. Transportation

Transportation shall be FOB Destination in the Order and no insurance cost shall be allowed unless authorized in writing on specific Order and the bill of lading shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.)

D. Clause 12 Termination for Cause: subparagraph (b) is deleted in its entirety.

ARTICLE 6 • SITE SPECIFIC TERMS AND CONDITIONS

The Seller acknowledges that the Contractor may have requirements unique to its post, mission, and/or geographic location. Therefore, the Subcontractor agrees that the Contractor placing an Order under this BOA reserves the right to incorporate its own Site-Specific Terms & Conditions relative to Environmental Safety and Health considerations as well as FAR, DEAR, or other applicable regulations and laws.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year of [Contractor's] signature date.

ACKNOWLEDGED AND CONFIRMED

Canon U.S.A., Inc.

The Regents of the University of California

Name: Gary R. Barth

Name: John Hernandez

Title: Director and General Manager

Title: Team Leader

Date: February 13, 1998

Date: 2-11-98

Signature: _____

Signature: _____

**BASIC ORDERING AGREEMENT
GENERAL TERMS AND CONDITIONS FOR COMMERCIAL ITEMS
DOE CONTRACTORS (10/96)
(ATTACHMENT B)**

1. DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States or America and includes the U. S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Seller means the person or organization that has entered into this Basic Ordering Agreement (BOA).
- (c) Company means any DOE Contractor utilizing the BOA.
- (d) Item includes "commercial item" and "commercial component" as defined in FAR 52.202-1.
- (e) Order means individual requests for items issued under this BOA.
- (f) Subcontract Administrator means Company's cognizant procurement representative.
- (g) Site Specific Terms and conditions means those unique requirements of the Company issuing Orders under this BOA which will supplement the general terms and conditions.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) item description, (2) Site Specific Terms and Conditions, (3) face of the BOA, (4) general terms and conditions, and (5) face of the Order.

3. TITLE AND ADMINISTRATION

All property rights and interests resulting from this Orders shall pass directly from Seller to the Government. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. The BOA and Orders may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

4. ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing the BOA or Orders or delivering the items identified therein agrees to comply with all the terms and conditions and all specifications and other documents that this BOA or Order incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirement of the BOA or Order, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of the BOA or any Order(s).

5. WARRANTY

Seller expressly warrants that items delivered under the Orders shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of the BOA and Order. The warranty shall begin upon acceptance and extend for a period of ninety (90) days. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such item(s). Transportation of replacement items and return of nonconforming items shall be at Seller's expense. If repair, replacement, or reperformance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocur the services at Seller's expense. Any implied warranty of merchantability or fitness for a particular purpose is hereby disclaimed.

6. ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amount due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller.

7. NEW MATERIALS

Unless otherwise specified in the BOA or Order, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

8. TRANSPORTATION

Transportation shall be FOB Destination in the Order and no insurance cost shall be allowed unless authorized in writing on the specific Order and the bill of lading shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.

9. RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such Loss shall entitle Seller to an equitable extension in delivery schedule obligations.

10. PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made. Notwithstanding anything herein, the Company shall be entitled at any end all times to set off against any amounts payable by the Company hereunder any amount owing from Seller to the Company under Orders with Seller.

11. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of the BOA. Seller warrants that each chemical substance constituting or contained in items furnished is on the list of substances published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheets as required by the Occupational Safety and Health Act and applicable regulations including, without exception 29 CFR 1910.1200.

12. TERMINATION FOR CAUSE

(a) The Company may terminate the BOA or any Orders for cause, in whole or in part, if the Seller fails to comply with any of the terms of the BOA or any Orders, or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items not accepted.

(b) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Sellers reasonable control and without its fault or negligence.

(c) The right and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under the BOA.

13. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Subcontract Administrator within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

14. TAXES

Taxes are stated under General Terms and Conditions of Seller's GSA Contracts.

15. CHANGES

(a) The Company reserves the right to make changes within any Order by issuance of a unilateral change order. Such changes may include, without limitation, changes in (1) the description of the Items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If

(b) any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the BOA or any Order shall be made by the parties in a bilateral modification. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.

(b) Only the Subcontract Administrator is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with the Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed.

16. TERMINATION FOR CONVENIENCE

The Company may, at its sole discretion, terminate the BOA or any Order, at any time, by giving the Seller a written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination at will by the Company.

17. SUSPENSION

The Company may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the BOA or any Order for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the BOA or any Order.

18. INCORPORATION BY REFERENCE

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Seller and Contracting Officer means the Company Subcontract Administrator. The FAR clauses may be obtained from the Company upon request.

The following clauses are incorporated by reference:

FAR 52.222-28 Equal Opportunity

FAR 82.222.35 Affirmative Action for Special Disabled and Vietnam Era Veterans

FAR 52.222.36 Affirmative Action far Handicapped Workers